Supreme Court, U.S.
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No. 10-706

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In The

Supreme Court of the United States

Roger Marx Desenberg
Petitioner,

v.

Google, Inc.
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Courts erred in dismissing the case by interpreting the BMC precedent to mean all patented inventions used by multiple parties are invalid per se, and even in cases when all of the steps of a pioneer web site patent is performed by a single web site.

2. Whether the Courts misinterpreted the web site patent as not having direction and control over its users, when Courts in the USA and other countries have found Google guilty for vicarious liability for the actions of its users.

3. Whether the Court erred in interpreting "user" must refer to a real person, since "user" in computers often refers to a program, and not a person, nor a representative.

4. Did the Court err by allowing Defendant, during litigation, to change status quo to hide infringement by changing the very patented technology under dispute; and has only changed over ten years as a response to the this case; without a Markman nor other hearing to check if AdWords is equivalent to the patented technology?

5. Whether the Courts erred in not recognizing Defendant and Courts failed to state a specific claim as to which step of the patent, in its entirety, violates a precedent from a case; and then dismiss based on a general non-specific claim without comparing Defendant's methods to the patent and without discovery.

6. Did the Court err in not granting a preliminary injunction as: (i) the traditional four factor test supports such action; (ii) Defendant has no patent; (iii) there is no prior art; (iv) Defendant's "Quality Score" bid rigging function would be removed benefiting the pubic interest; and (v) Defendant would not suffer significant hardship nor revenue loss; and (vi) the principals of equity have been ignored by the Courts.

7. Who has rights to write standard architectures for the industry: (i) the CEO from the infringing startup company, who introduced bid rigging, educated the public to think bid rigging is unavoidable and acceptable, and instituted a version of the patented method enabling over $3 billion of fraud per year; or

(ii) the Inventor and CEO of the startup company who endured for seven years to earn the patent rights from the USPTO in order to prevent excessive fraud for the public interest?

PARTIES TO THE PROCEEDINGS

Petitioner and appellant is Roger Marx Desenberg, the past CEO of an Internet startup that first used the domain name "ProjectWork.com".

Respondent and appellee is Google, Inc. who was an Internet startup at the same time as appellant.

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PETITION FOR CERTIORARI

Petitioner Roger Marx Desenberg, respectfully seek a writ of certiorari to the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

Opinion of the Federal Circuit was entered on August 31, 2010, No. 2010-1212, Fed. Cir. Jan-2010, P.13. The district court's order affirming the dismissal for failure to state a claim for either direct or indirect patent infringement was entered on January 11, 2010, (1:08-10121) SDNY.

JURISDICTION

The court of appeals entered its judgement in this on August 30, 2010 and denied the Plaintiff's request to reverse the dismissal. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1) Section 8, Article 1 is being violated: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

2) The '732 Patent issued by the U.S. Patent and Trademark Office confer upon the patent holder "the right to exclude others from making, using or selling the invention throughout the United States" and its territories and possessions.

3) U.S. Const. Amend. V, "No person shall" ... "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

This case presents several important questions of federal patent law with significant implications for the Nation's economy.

"QUALITY SCORE" FUNCTION OF GOOGLE'S ADWORDS IS A BID RIGGING SYSTEM THAT VIOLATES THE SHERMAN ACT

The "Quality Score" function implemented by the Defendant can only be reasonably interpreted as being a bid rigging mechanism.

Suppose in an apple store the same kind of apple was priced differently for each different group of people. Wealthy people or popular people "chosen" by the store are given a low price to buy one single apple, but some new person off the street must pay double the price for the same apple, even though quantity discounts were irrelevant because each apple was sold individually. It would be the same as if a stock exchange had a different market price for a stock for different groups of people, based on whatever the stock exchange wanted. So if the real market price of a stock was $5, and a new user came onto the exchange, and gave this person a price of $9, for whatever reason, instead of $5, this would violate the fair competition laws of the United States.

One of the ways Google implements bid rigging is through their "quality score" mechanism. Leads are generally much more valuable than apples or stock. A stock may increase $1 or may double or triple in value. A good lead will typically bring in revenue in an amount of ten (10) times the price paid for the lead, or more. So if lead costs $10, and business is transacted, revenue will often be at least $100 or more. So leads are very valuable, especially if they are highly targeted.

Companies and individuals are limited by resources in the number of leads it can handle by responding effectively.

An individual may only be able to handle and respond to five proposals a day. Suppose a large company can handle 100 proposals a day. Suppose a large company, ("LargeCo") is willing to pay $10 per lead, and an individual ("Indo"), who is in the same business, is also willing to pay $10 per lead. According to Google's architecture, the company and individual will each have a "Quality Score" based on something. What the quality score is based on is not significant. In all cases the result is always bid rigging.

Suppose the QS for LargeCo is "80", and the QS of Indo is "44". (See Appendix for complete bid rigging explanation.) "Ad Rank" will be 80/10 or 8, and 44/11 or 4. AdRank decides who gets the leads. On this round five leads are being provided, and the organization with the 6th highest "Ad Rank" will not be given the lead. Using the scenario across several vendors the "Ad Rank" may look like this:

	Max price	Quality Score	Ad Rank
Company 1	10	80	8
Company 2	10	70	7
Company 3	10	60	6
Company 4	10	50	5
Company 5	10	50	5

Company 6	11	44	4

In this scenario, even though Company 6 is willing to pay the most for a lead, $11, Company 6 is being denied

the opportunity to purchase the lead at the same price as the others. Company 6 may have to pay $20 for the same commodity where Company 1 would be paying only $10 or $8. Since each lead is priced and sold individually there are no quantity discounts. Through Google's analytical software, they know which leads are most valuable and most likely to generate commercial transactions, and they use the Quality Score so the best leads are pushed to their favorite organizations. Claiming the Quality Score is increasing the likelihood of a "good transaction" is tantamount to saying, "Our preferred partner is a big company and can handle all the business we attract. So we give them all the leads."

Considering Internet lead generation is now becoming vital to the survival of many businesses, big and small, Google is in essence illegally, and unfairly controlling which organizations are obtaining the best leads, while over charging organizations Google does not like.

Google claims the Quality Score is based on "the likelihood that someone will click on an ad". This is interesting but irrelevant. Whatever the basis of the Quality Score calculation, it always results in bid rigging. Google may suggest that since their objective is to maximize their revenue, they should be allowed to decide which organizations get the best leads, if that decision process maximizes their revenue. But maximizing revenue is not a valid or legal permission to violate the Sherman Act and provide an unfair pricing mechanism and unfair marketplace.

There are many ways Google can incorrectly implement the maximum price system which causes market confusion and fraud. Google, through its Quality Score function, successfully excludes some groups from participating fairly

in Internet maximum price lead marketplaces.

Does Google still infringe on the '732 patent when they implement the Quality Score? Yes. Because each lead has a maximum price, and the price paid for each lead is in between 0 and its maximum price, as in claim 1 of the '732 patent. The bid rigging AdRank function does not change the method to avoid being within the bounds of claim 1 of the 732 patent. Mathematically the sorting is ultimately dependent on the maximum price, unless bid rigging is used.

The Plaintiff has the patent rights to remove the Quality Score from the marketplace to reduce excessive fraud. Thus we argue that these Quality Score facts supports the Plaintiff's position that a preliminary injunction provides needed and vital public interest benefits and should be so ordered as soon as the Court spends an hour of time ascertaining infringement.

WEB SITES DIRECT AND CONTROL

The essence of the Internet is allowing billions of people to be completely directed and controlled in certain activities, where a strict set of rules are followed. For example, typically all web sites that accept contact information, generally have a field called "Phone Number"; and the data entered is typically validated by the web site to ensure a phone number is entered. Letters are not accepted, and the number of digits is sometimes counted, with a minimum number of digits needed. The web site completely controls and directs what the user can do. The user can ONLY enter numerical data. The user cannot enter audio data, or video data, or an email, or a search. Only a set of numbers

can be entered. And some web sites even test the phone number automatically by a computer phone call to verify the number is in control of the user. The point is, the nature of the Internet is in the directing and controlling of users via validating data. Invalid data doesn't work, and with simple field validation inventors build web sites to direct and control huge populations in minutes.

Users are so controlled that some web sites direct them to hit certain keys and what time of day the keys must be hit, and in what combination. That's a lot of control. The following web sites all direct and control their users:

amazon.com, priceline.com, ebay.com, projectwork.com, google.com/adwords.

Today, web sites direct and control how people collect unemployment, obtain jobs, rent housing, purchase tickets, file taxes, etc. Since in each step of the '732 patent a web server is the primary thing that is performing the method, it is clearly a web site invention. And web site inventions inherently direct and control users. The BMC invalid invention is not a web site invention, and is not a stand alone web site invention, and therefore though the BMC precedent is considered good law, the facts herein distinguish with the '732 case, and the BMC precedent was distinguished in seven other cases.

Many patents, such as Priceline's patent 5,794,207, were found to be valid and were multi-party in the same way as the 732 patent: all the claimed steps are performed by a web server, and other users which could be actors that use the web server are described in the claims in "wherein" and "from" clauses to describe data. Hence in these other cases, the good law of BMC did not apply.

The final test to determine if web sites direct and control to meet the standards is vicarious liability tests. Software programmers and software companies, and Internet companies have always been vicarious libel for enabling users to violate laws. Google is vicarious libel for the behavior of its users, and many civil suits have been filed against Google for their vicarious liability and many Courts around the world have found Google vicarious libel for the actions of its users. If users use the system in a such a way as to violate copyright law, or other laws, Google is libel.

Thus the '732 patented technology, like all web sites, directs and controls. Thus, patents that protect web site inventions, such as the '732 patent, where all the claimed steps are performed by a web site, are valid patents according to the BMC standard and according to the direction and control standards, and especially so regarding vicarious liability.

STEP BY STEP, WHAT IS PERFORMING THE STEPS?

The quotations are from the claim 1 of the '732 patent, and the entire claim 1 is presented here showing all steps are performed by a machine, the machine usually being a web server, though the machine type performing the method is not specified, so there is no bounds as to the type of machine.

Function 1:
1. "A method for a user using a communication network to search for and identify at least one matching provider of project work, the method comprising";
THIS IS THE OVERALL FUNCTION OR GOAL OF THE INVENTION. THERE IS NO STEP DEFINED IN THIS PREAMBLE.

STEP1:
transmission of a lead comprising contact information that enables communication between the user and the provider,
WHAT IS **TRANSMITTING**? ANSWER: THE WEB SITE.

DEFINITION 1-A:
wherein the transaction lead price is the amount of money paid for the lead, and further
THIS IS A DEFINITION, NO PERFORMANCE OF ANYTHING

RESULT1:
wherein a service is performed by the user or the provider as a result of the tranmission of the lead and
THIS IS A RESULT, NOT A STEP. Adding a commercial

transaction as a result makes the patent stronger, not weaker, according to patent examiner bashore.

RESULT2:

wherein the performance of the service includes a service transaction fee paid by the user or the provider;
THIS IS A DEFINITION, NOT A STEP. THE SERVICE INCLUDES A FEE.

STEP2:

storing in a database at least first provider information and second provider information,
WHAT IS **STORING**? THE WEB SITE IS STORING.

DEFINITION 2-A:

"the at least first provider information and the at least second provider representing at least respective maximum lead prices,

each of the respective maximum lead prices representing the maximum amount that each of at least a first provider and a second provider is willing to pay for an lead,

wherein each of the at least first and second providers provide at least one service with which the lead is associated; "
THESE ARE DEFINITIONS. NO STEPS PERFORMED.

STEP 3:

"**comparing** the respective maximum lead prices to determine a lowest respective maximum lead price; "
WHAT IS **COMPARING**? ANSWER: THE WEB SITE

STEP 4:

"**identifying** the provider associated with the lowest one of the respective maximum lead prices; "

WHAT IS **IDENTIFYING**? ANSWER: THE WEB SITE

STEP 5:

"**receiving** at least one lead limit that represents a maximum quantity of leads to be provided; "

WHAT IS **RECEIVING**? ANSWER: THE WEB SITE

STEP 6:

"**receiving** from a user or provider a request for contact information, the contact information enabling communication between the user and at least one of the first provider and the second provider; "

WHAT IS **RECEIVING**? ANSWER: THE WEB SITE

STEP 7:

"**selecting** at least one provider based on each respective provider's maximum lead price and the lead limit; "

WHAT IS **SELECTING**? ANSWER: THE WEB SITE

STEP 8:

"**calculating** a respective transaction lead price for each of the at least one selected provider, wherein the respective transaction lead price equals at most each respective selected provider's maximum lead price; and "

WHAT IS **CALCULATING**? ANSWER: THE WEB SITE

STEP 9:

"**providing** the at least one lead to the user or provider for project work."

WHAT IS **PROVIDING**? ANSWER: THE WEB SITE

The web server does all the steps, and the results of providing leads are service transactions. All perfectly drafted.

For a judge or Court to argue that Google or a web site does not have direction and control of its users, and not have vicarious liability, the Judge and Court must ignore a large body of recent intellectual property precedents and patent laws including those listed in the Table of Authorities. Pro Se Plaintiff only recently has been able to access to LexisNexis and other legal research tools that are available to attorneys. Pro Se Plaintiff just recently learned the meaning of the terms "vicarious liability" and "principals of equity". Why must Pro Se Plaintiff be required to present legal information to the Courts that they already know in order to secure his patent rights?

To avoid the truth through an attitude of "no one is as blind as those who don't want to see" is very disheartening for a USA citizen to experience from his own country.

In Gd I trust that justice will be swift and equitable.

MULTI-PARTY ISSUES, IRREPARABLE HARM, AND PRINCIPALS OF EQUITY

BACKGROUND

Plaintiffs invention has been operational and ready for business since July 21, 1999.

The system Plaintiff invented is a "global" system, that requires thresholds of populations needed to run. It cannot serve one client. It doesn't work then. It only begins to work its magic when there are thousands of clients, and the more the people use it, the more amazing it is. This is the nature of the Internet, and the nature of Plaintiff's invention.

Considering that in 1999 Plaintiff created an invention, the entire set of work includes several types of intellectual property including: patent rights, trademarks, copyrights on software, books, and videos.

The patented method is normally 100% performed by a set of web servers, though the software could run on another type of hardware other than web servers. The usual architecture is one web server, that serves up web pages, and a database server that stores and reports the data. Together, they produce the method. A larger system will add more servers. The patent is not limited to being a web server. But it is written so whatever "it" is doing the method, if the hardware/software combination does all the steps, and the result is a service transaction, the party responsible for the operation and ownership of the system that produces the method, infringes.

Internet inventions are machines, a combination of hardware and software. Alone, neither the hardware nor the software will do anything. But run software on some hardware and the single most fantastic innovation is created, the Internet. A properly written Internet method patent will describe what the functions or steps the software-hardware combination performs.

PUBLIC INTEREST PIONEER PATENT VS PATENT TROLL ATTEMPT AT SUBVERTING PATENT SYSTEM

Internet patented inventions may have various characteristics and be of various types, such as:

(i) stand alone inventions where the test is if a computer kiosk was placed in a public place, and only performed the inventive claimed method of the patent, would

a commercial financial transaction result? If the answer is yes, then the patent may be one of the few Internet pioneer patents that have been invented. The '732 patent is one of these pioneer patents.

(ii) Another type of computer patented invention can be thought of as a component, such as an inventive searching method or organizing method. The i4i case (6:07-cv-00113-LED) concerns a component invention. By itself this patent does nothing. It is a way of organizing data. But used with a word processer, like Microsoft's Word for example, the method can be used to make the time to store and retrieve data a little faster. And this small increase in efficiency may have significant results for some people using the invention. Generally, commercial financial transactions are not a direct result of the practicing of a method component such as the i4i patented technology. i4i did obtain order for an injunction against Microsoft.

The very best and most important Internet inventions are stand alone inventions that create commercial financial transactions like the '732 pioneer patent.

COURTS DETERMINED MULTI-PARTY INTERNET PATENTS ARE VALID CONTRARY TO THE FEDERAL CIRCUIT'S DECISION

The Internet is clearly a multiple party invention, and in fact is only useful because multiple parties use it. Internet inventions are clearly patentable, and this is law. Internet inventions are described in patent claims with references to users and types of data and processing, and where the data originated.

Most Internet inventions are web sites that perform a function consisting of several steps or sub-functions, where such function has a result. If one person uses the patented invention, nothing happens. If hundred people use the invention, maybe one commercial transaction will happen. If ten thousand people are directed and controlled by the web site invention, a few thousand dollars of transactions may happen. When millions of people use, and are directed and controlled by the invention, billions of dollars of transactions will happen. That's the big kick for a software professional, having masses of people use their code, and have the world know who wrote the code.

After all, the great struggle in every patent litigation is balancing the fact that discovery is by far the most expensive part of the process with the fact that the vast majority of cases settle during the course of discovery, as a result of facts revealed through discovery. But in this case, no discovery and no extrinsic evidence was allowed.

PATENT VALIDITY BASED ON NOT DISTINGUISHING DIFFERENT TYPES OF MULTI-PARTY CHARACTERISTICS

There exist several different types of "multi-party" characteristics. For example:

(i) Multiple party patents used by multiple people; All patents are multiple party patents because all patented inventions are made to be used by multiple parties.

(ii) Method patents where one machine performs all the claimed steps of the claimed method, where multiple parties are mentioned in the claims;

(iii) Invalid method patents were multiple parties

performs different steps of the claimed method using different disconnected machines.

Further, neither the Defendant, nor the District Court made any distinction between different multi-party characteristics but instead called the '732 patent a "multiple party patent", and claimed any patent that mentions multiple parties is a multiple party patent, and therefore invalid. There is no distinction of method patents that are (i) used by multiple parties, vs. (ii) patents that mention multiple parties in the claims but still have one machine performing all the claimed steps of the method, vs. (iii) invalid patents that mention multiple parties, and have multiple parties performing multiple steps using multiple disconnected machines without vicarious liability nor direction and control over its users.

The method describes a set of web site pages that performs functions, and the method is written perfectly, with one party infringing, the one owning and controlling the web site which performs all nine steps of the claimed method.

Clearly, there are many "multiple party" patents that have been considered valid by the Courts, such as the PriceLine.com Patent No. 5,794,207 whose first lines are:

> "1. A method for using a computer to facilitate a transaction between a buyer and at least one of sellers, comprising:
> inputting into the computer a conditional purchase offer which includes an offer price;..."

Clearly Courts have found patents to be valid where multiple parties are mentioned, yet all steps are performed

by the web site, which is the format of the '732 patent.

FAILED TO STATE A CLAIM OF SPECIFYING AT LEAST ONE STEP THAT IS NOT PERFORMED BY THE WEB SITE

Neither Defendant nor the Courts have identified at least one of the nine specified steps as being performed by another party. Which step in claim 1 of the '732 patent is not performed by the web site? This question was never answered by the Courts, nor the Defendant. "User and provider steps" were mentioned, and there are no user and provider steps, and results were claimed to be steps.

There is considerable ambiguity about the definition of a "step". In the other patent claims the word "step" was used. In Patent 732 the word "step" is not used and the word "result" is used. Valid interpretations of how many steps are in claim 1 of the '732 patent include:

(i) one step of transmitting leads comprised of 9 substeps with 2 results or

(ii) one function of transmitting leads comprised of 9 steps with 2 results.

Only one party, the owner or controller of web servers, infringe as the web site performs the step of transmitting leads. Are all 9 "steps" or "subfunctions" or "substeps" being performed by the Google's AdSense and AdWords servers? YES.

ABSURD TO BE FORCED TO SHOW THAT RESULTS ARE NOT STEPS TO BE PERFORMED BY THE INVENTION ACCORDING TO PATENT LAW

The Defendant, and the Courts, suggests that a result is a step that is to be performed by the infringing party. A result is not a step, but a "result" is what happens after the steps of the invention are performed by the web server.

The Defense argues that the '732 patent phrase, "wherein a service is performed by the user or the provider as a result of the transmission of the lead and wherein the performance of the service includes a service transaction fee paid by the user or the provider" means that Google must act as a "user" or "provider" to infringe. This is absurd. Only a bias or other incentive could influence the Courts to accept this absurdity. Google does not have to perform any service transaction to infringe, and does not have to be the user or provider. A result of their infringing web site, is service transactions are performed, and is in fact why Google's customers pay them: they pay Google for having service transactions result. The BMC precedent does not set a precedent for the absurd such as:

(i) every subject of every sentence in a patent claim must refer to the party infringing; and

(ii) results, if mentioned in claims, must also be performed by the party infringing. The District Court may have been influenced by other factors such as bias to make such blatant absurd statements.

As opposed to black law, this kind of reasoning is a black hole of absurdity, with no light, and no knowledge escaping, just a blind eye that does not want to see.

The "performance" of the invention results in the

"performance of a service transaction". The Courts use of "no one is as blind as those who don't want to see" attitude is shocking to a citizen not accustomed to working in the legal world.

DEFENDANT'S MACHINE REPRESENTS PLAINTIFF'S WORK, AND PERFORMS ALL THE STEPS OF THE METHOD, NO PARTY NOR ACTOR PERFORMS ANY CLAIMED STEPS

In the case of claim 1 of the 732 patent, there is no "party" or "actor" that performs the claimed steps. The Court is treating a web site or a web server as an "actor" when in fact, what is performing the steps of the claimed method, is a machine. The infringing party does not actually perform any steps of the method, the infringing party owns or controls the machine that performs the steps of the method. To claim that the machine is a "representative" of the infringing party is not accurate. "Representative" is defined as "someone who is authorized to act in place of and on behalf of someone else, by that other person for some special purpose."

Google is not authorized to use the method that runs AdWords. And Google has many patents. But they didn't invent this. Google's infringing web site represents how the Plaintiff has used a computer to produce a system that generates leads and Google copied the web site. Google does not infringe by the action of any actor actually performing any of the steps, like sorting maximum prices. Google infringes because they copied the Plaintiff's software, installed that software on their web site, and their web site performs those steps. The actual acts of infringement that

Google performs is the writing of the software, which resides on a communication network, that performs the steps of the claimed method, and putting the machine, a software and hardware combination, on the Internet, wherein the machine performs the claimed steps. Thus, Google's AdWords web site is "representative" of the Plaintiff's work, not the Defendant's. Thus the Defense and the Court's counting as a party, Google themselves, is inaccurate. Google does not perform any steps themselves, their machine does the steps and Google owns the machine, which is representative of the Plaintiff's work.

Google's infringement act is collecting the lead revenue from the Plaintiff's patented method, and ignoring the Plaintiff's patent rights. In this sense Google's web site is really more representative of the Plaintiff, not the Defendant. The Defendant infringes and violates law by owning and controlling a machine that performs the steps of the patented claimed method.

Google's Web Servers, like the Plaintiff's Web servers, distribute leads, and both do so by performing the nine steps. That is the entire act of direct infringement: having a set of web servers perform the nine steps. Google's Web server performs each and so does commit direct infringement.

A "user" or "provider" in the context of the claims is more reasonably interpreted as referring to user data, and provider data rather than a "person". A "user" as used in claim 1 of the 732 patent, may be a software program that is a user, or a location in computer memory, and is not necessarily an "actor" inputting data. The data could be calculated from statistics, without any input from the user or provider. The user and provider limitations clearly are not individual claimed steps of the invention. The method

claims receiving information from a user. It does not claim the step on the inputting of information by the user. If it did, it would be written as:

The method comprising;

receiving of information from a user or provider;

inputting information by a user or provider.

In that case, the method would have the two steps, receiving and inputting. What a user or provider does is outside the scope of the claims. This is analogous to saying an invention for a radio receiver must include the invention of a radio transmitter. It is an absurd argument. This is the kind of word games and trickery the Defendant is engaging in, and its all absurd and illogical.

"Applying this precedent, the district court held that a claim for direct infringement "would require Desenberg to allege that Google performs both the 'user' and 'provider' steps in the claim, which Desenberg has not alleged, and by

the very terms of his patent, cannot realistically allege." This is absurd. Applying this precedent would not require Google to perform the user and provider steps in the claim, because there are not any user or provider steps in the claim. There are only web server steps and results.

Neither the Defendant nor the District Court, nor the Federal Circuit identified a complete claimed step where another party is performing the step other than the web server(s). The Plaintiff's patent is being denied the right to discovery for an illogical and unlawful set of arguments by the Defendant, and by the Courts.

There is no law that invalidates multiple party patents. The BMC precedent does not suggest a result of the steps of an invention is limited to any number of parties.

PATENT RIGHT SETTLEMENT VS COPYRIGHT SETTLEMENT

No amount of money in the world could ever pay for denying the Plaintiff's right to run his business for the remainder of the 10 years of the patent. The Plaintiff did not sweat and invest years of time and money into the '732 patent to obtain a copyright settlement. The Plaintiff came to obtain a patent settlement in the way patents were originally meant to work. Plaintiff is not interested in trying to be a patent troll, and in fact Plaintiff loathes patent trolls as they make the real inventors look bad. Plaintiff respectfully demands his fair share of the revenue, and the ability to write the industry standards. According to the Plaintiff and the "The Economist", a new architecture where there is one entity overseeing the code and the architecture, to remove the excessive fraud is needed and the time is now.

This can be achieved in a well crafted preliminary injunction that leaves the Defendant's revenue not significantly changed. Considering the Defendant earns $14 billion annually, earning only $12.5 billion is not a significant difference. It's still a lot of money for infringing someone else's intellectual property during the course of litigation.

BIAS EXPECTED AND PROBABLY UNAVOIDABLE

Plaintiff maintains it is not unexpected the District Court supported dismissal because it is easy to be biased because so many years have passed and so much money is involved, and it is a story that is hard to believe, that AdWords and AdSense was invented and patented by another dot com start up, and that their strategy was to remain quiet until

the patent issued, and then to file suit, which amounts to ten years time now. Admittedly it sounds like a crazy story. But on the face of the complaint, and according to the defendant's responses, there is little doubt the story is in fact true. The Defendant has no patent, and there is no question that the Plaintiff invented and built in 1999 said unique invention, before any one else in our world of any country, on any continent, and the Defendant has not been able re-engineer around the patent claims nor avoid infringement. In the i4i case (6:07-cv-00113-LED), which has a patent date of 1998, an injunction was ordered against Microsoft ten years later, in 2009. Patent litigation, because of large corporations control of Federal Civil Procedures, requires a long time to litigate. For the '732 patent, over 50% of patent protection has already elapsed. Out of 20 years, only 9 years remain. The Defendant has successfully infringed for over 10 years.

STATUS QUO ABLE TO BE CHANGED BY DEFENDANT AND PRELIMINARY INJUNCTION IS APPROPRIATE

Preliminary injunction is appropriate and supported by:

(i) Defendant has no patent;

(ii) Defendant has not presented any prior art;

(iv) Both methods are maximum price based lead price mechanism;

(v) All four factors for a preliminary injunction are met;

(vi) no significant harm to Defendant;

(vii) bid rigging scheme can be stopped;

(vii) excessive fraud can be reduced.

Judges denied keeping status quo unchanged for the trial

giving Google time and opportunity to hide infringement, temporarily during discovery. Thus considering all the circumstances, the Plaintiff realized that the proceedings was not a fair and just proceedings according to both law and equity.

The Courts responded with an ultimatum: hire an attorney or have the case dismissed.

There is a difference in a newly hired patent examiner and a wise examiner who has been doing patent work for decades like Examiner Bashore and he required a result be added to the claims "to give the patent teeth". Patent Examiner Bashore explained to the Plaintiff why the patent was better written to include a commercial financial transaction as a result. The Courts erred in applying law and interpreting law and interpreting patent claims.

THE MYTH: THE WORLD NEEDS GOOGLE

Because of the nature of the Internet a small inventor can provide the same services to a billion users in the same way as a huge computer company, without hiring any additional employees. Since software can be copied so easily, and servers can be added easily to handle volumes of users, Plaintiff can provide enough computer power to handle the processing and delivering of millions of leads per day by ordering extra web servers from a favorite data center. If the Google search engine didn't exist, the public would not miss it. Because there are lots of other search engines. But if Google took AdWords down, the Plaintiff's patented method, then many service marketplace transactions would stop, and that would be bad for everyone for a few weeks until the clients starting using another system. After a

new system was adopted the only difference would be the removal of excessive fraud, an added benefit.

The only resource the Defendant adds to the patented method to generate windfall profits, is creating large lists of users who are willing to try whatever technology is marketed to them. The Defendant adds nothing else in terms of resources, salesmanship, real estate, support, supporting services, to make the lead generation work. The Defendant does copy and implement someone else's patented research and development, then makes a few changes that add fraud and increase their short term revenue and collect all the lead revenue without paying any patent fees, copyright fees and ignoring copyright and patent laws.

What basis can a reasonable judge or jury claim there is not likelihood on the merits, based on what? The Courts never responded, only used their "no one is as blind as those who don't want to see" attitude to avert the question.

INFRINGEMENT DETERMINATION REQUIRES ONLY ONE HOUR

To ascertain infringement only requires one hour of time.

(i) review Plaintiff's explanation of the maximum price system in the first provisional application in July of 1999 and compare to claim 1 and determine if indeed claim 1 reflects the original invention and application.

(ii) review Plaintiff's screens and compare to Defendant's screens.

(iii) review Plaintiff's explanation of how the Lead Option Engine works and compare to AdWords and AdSense descriptions from the Defendant.

(iv) compare the instructive films of both Defendant and the Plaintiff,

(v) Review claim 1 and compare to Defendant's AdWords

(vi) review deconstruction document

A more thorough proceeding may include additional steps such as:

(vii) review a live session using ProjectWork.com and compare to AdWords live session.

Only one hour of time is required, if well prepared.

If the average high school student was given the following web sites in mixed up order:

priceline.com google.com/adwords ebay.com
myspace.com amazon.com projectwork.com
barnesandnoble.com facebook.com ebid.com
travelocity.com

and was asked to organize the web sites and put them in groups of two, where each group contains two web sites having the same general function, such as social networking, buying a plane ticket, or getting a business lead. The student may read the descriptions or register and use the web site to understand how it works. After grouping which web sites are the "same" or similar in function, most high school students would come up with:

facebook.com	=	myspace.com
amazon.com	=	barnesandnoble.com
priceline.com	=	travelocity.com
google.com/adwords	=	projectwork.com
ebay.com	=	ebid.com

in about 10 minutes of time. Before the Internet, no one could check any kind of patent infringement in an hour:

(i) Case files are available at desenbergVgoogle.com

(ii) Prosecution history is available through uspto.gov

(iii) Legal research is available via the Internet.

For the first time in mankind's history, some kinds of patent infringement can be ascertained in minutes instead of weeks and months when using traditional discovery procedures requiring actual physical machines and paper documents to be transported. It is time for a swift and equitable justice to occur.

IRREPARABLE HARM SUMMARY

This short analogy paints the heart of the irreparable harm truth. Imagine a professional basketball league unlawfully prevented a star player entry into the league. Further imagine that the star player filed a law suit, and asked for a preliminary injunction to stop the rule disallowing him to play, so he could play. And imagine that the Defense said, "The reason the Plaintiff plays the game of basketball is to earn money. Since monetary damages can cover his lost salaries, there is no irreparable harm because money can pay for the lost salaries. Who cares if he doesn't get to actually play basketball for the two years, it's all about the money." Except, the basketball player misses out on playing basketball, which is what he really wants to do.

Plaintiff in this case wants to write and enforce the standard architectures for the maximum price lead generation method industry for the United States of America by leveraging his patent rights to benefit the public interest.

Plaintiff wants not just money, Plaintiff wants to play. Plaintiff respectfully requests his rights be enforced

according to the patent laws of the USA as soon as possible so he can play now.

Plaintiff has presented this case to the federal courts of the United States in order to compare the Defendant's AdWords and AdSense systems and methods to claim one of the '732 patent to ascertain infringement. Plaintiff has been ready to analyze and discuss these issues for several years. Instead the Courts are requiring Plaintiff to teach them about how an Internet web site patent should be written to avoid being dismissed by a precedent set in an unrelated and irrelevant case that bears very little similarity to this case. This is not what patent litigation is about. Plaintiff is not here to teach the District Court and the Federal Circuit about how to write a proper Internet patent. That, they should already know. Plaintiff is here to compare claim one to the Defendant's system. And this is the what Plaintiff is asking the US Supreme Court to do next, ascertain likelihood on the merits properly because the other Courts refused for inappropriate causes and influences.

It only takes about an hour of time to know if Defendant infringes on the '732 patent.

REASONS FOR GRANTING THE PETITION

Startups who are popular, well financed, well connected politically with several government agencies should not be allowed to freely infringe, copy and distribute research and technology patented by other lesser known startups. In fact preventing this behavior is the foundation of patent law.

A patent is only useful for a limited time. Over 50% of the '732 patent's use has already expired. Of twenty (20) years,

only nine (9) years are left; hence not ordering a preliminary injunction, in this case, is tantamount to agreeing that well financed startups should be able to infringe on copyrights and patents for as long as the Federal Civil Procedures allows.

This case can be a landmark case showing Internet inventors and businesses how to best leverage Internet patent law to benefit all parties involved, by suggesting that Internet inventors should offer something to the public interest, such as quality assurance, with a reasonable fee structure. This case can be a guide for a standard fee structure and a new use of the preliminary injunction for Internet cases such as:

(i) the halting of the origination of the product or service, while

(ii) allowing the defendant to re-sell the product or service,

(iii) thereby upholding the patent rights of the inventor, and

(iv) enabling the infringing company to continue to earn reasonable fees

(v) during the term of the litigation.

This case will be of national interest.

The decisions of this Court have violated Section 8, Article 1 and have instead, given patent rights to the first to copy and distribute rather than to the patent owner and inventor. This error, which goes to the heart of patent enforcement, could undermine the patent law's promotion of innovation and certainly will lead to an increase in intellectual property theft and continued bid rigging, thus review by this Court is necessary. Moreover, the Federal Circuit's exclusive appellate jurisdiction over patent disputes, 28 U.S.C. § 1295(a)(4), ensures that the issue raised in this case will

not be further vetted in the lower courts. Accordingly, this Court is the only forum available to correct the fundamental departure from statutory construction embodied by the Federal Circuit's decision.

CONCLUSION

A preliminary injunction in the context of patent law is a potent remedy, and a critical element that is required for patent law to actually function in the economy as intended. For without the threat of, or execution of, preliminary injunctions and permanent injunctions, patent law would be rendered useless.

The defendant is faced with an easy choice when a preliminary injunction is ordered:

> (i) relinquish the origination of the leads, and instead resell leads and continue to enjoy 90% of the revenue they currently enjoy, and remove the bid rigging scheme which is named "Quality Score", and continue earning billions of dollars from the use of the technology protected by the '732 patent, or
>
> (ii) change their system, making it not work so well, and lose more than half of their business because of the inefficiencies of other systems and continue with their bid rigging schemes and risk more damage to their brand, as well as additional anti-trust violation litigation, and lose their "best cost" reseller status with the patent owner, and risk permanent injunction at a later date.

Recognizing that a preliminary injunction is a powerful and coercive remedy and is sometimes appropriate, and in this case, required to remove bid rigging and excessive

fraud currently at over $3 billion per year as reported by "The Economist" journal;

the courts have repeatedly ordered preliminary injunctions in patent cases involving extraordinary circumstances that meet the traditional four factor test.

In particular, § 283 of the Patent Act provides that an injunction should issue to prevent future violations when the relief comports with the principles of equity. 35 U.S.C. § 283.

The Federal Circuit has decided to ignore this rule. And in its place, the courts have authored its own variant of § 283, replacing equitable discretion with a virtually irrebuttable presumption that preliminary injunctions should not issue against large venture capital backed companies involving billions of dollars on behalf of entrepreneurs of small start ups who had their research and development copied by the large venture capital invested companies; and

a preliminary injunction should not be granted, nor a Markman hearing be granted, nor discovery be granted, nor any extrinsic evidence be diagnosed;

even in the presence of exceptional circumstances where injunctive relief is the only speedy resolution to the continued harm endured by the public interest by Defendant's bid rigging and excessive fraud, which endangers the public health;

and where the only resolution to completely halting the irreparable harm endured by the Inventor is a preliminary injunction.

The consequences of this rule are clear. Injunctions will never issue against startups that become large companies who have no patents and that steal the research and development of startup that are small companies that do have patents. But the patent laws, and principals of equity

dictate that Plaintiffs who continue to suffer daily immense irreparable injury, and who shall never be compensable by any amount of money for past and future damages, should benefit from a preliminary injunction, especially where their future losses may include the long term effects of:

(i) not engaging in long term business relationships because the defendant is engaging in those business relationships
(ii) not engaging in the authoring of standard architectures,
(iii) the branding lost,
(iv) loss of related business services deployment.

Given that the ebay/MercExchange case indisputably imbues districts courts with the responsibility of properly performing a determination if a preliminary injunction is appropriate, on a case by case basis, these rulings cast serious doubt, and thus warrant this Court's further review.

In light of the dramatic rise in patent litigation, the Federal Circuit's lack of distinguishing a pioneer patent from a invalid patent from a patent troll, and their multi-party automatic dismissal rule, will have a significant and detrimental impact on innovating companies and on the very structure of intellectual property theft and ownership.

If the Courts, as they have, are permitted to take a "no one is as blind as those who don't want to see" attitude, the resulting harmful impact on the United Sates of America will be incalculable. Thus, Plaintiff respectfully requests that his patent rights be enforced via an appropriate court order as soon as possible, so the Plaintiff can immediately remove the bid rigging, and begin to chip away at the huge excessive fraud beast the Defendant has used ten years to create.

For these reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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